

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

In re ALLY FINANCIAL INC.,
SECURITIES LITIGATION

Case No: 16-013616-CB
Hon. Brian R. Sullivan

This Document Relates To:

CLASS ACTION

ALL ACTIONS.

ORDER DENYING STAY

ORDER DENYING STAY

At a session of said Court, held in the City
County Building, City of Detroit, County of
Wayne, State of Michigan, on
8/1/2018

PRESENT: HONORABLE BRIAN R. SULLIVAN

Plaintiffs filed suit against defendants and generally alleged Ally Financials 2014 Initial Public Offering of stock contained material misinformation as to value, or failed to disclose information such that it compromised their decision to purchase the stock and/or affected the stock value. Defendant answered that suit. Discovery has been undertaken. Defendant now seeks a protective order or stay of any discovery until the defendant's motion to dismiss is heard in August, 2018. The court, without oral argument, denies defendant's motion for stay.

This case is a consolidation of three cases (for discovery), two of which were

filed in Wayne County and a third in Oakland County.¹ All three cases asserted 1933 claims and were transferred into the business court of Wayne County Circuit Court.

In 2017 defendant requested a stay pending a jurisdictional ruling in *Cyan, Inc. v Beaver Cty Empl Ret Fund*, ____ US ____; 138 S. Ct. 10061 (2018). The Supreme Court decided *Cyan* on March 20, 2018 and held state courts have jurisdiction to hear 1933 actions. The cases proceeded. Plaintiffs sent defendants Request for Production of Documents and Interrogatories to Ally (May 7, 2018); to the Underwriter defendants (May 7, 2018) and Second Request for Production of Documents (May 30, 2018).

Defendants responded by objecting to the discovery and asserted there was a stay of discovery under *Cyan* until the motion to dismiss has been decided. See defendant's general objections, June 4, 2018.

Defendants now seek a protective order and automatic stay of discovery under the Private Securities Litigation Reform Act (PSLRA) of 1995 or MCR 2.302(C). Defendants contend the PSLRA has a stay provision which applies to state courts "private [securities] actions." 15 USC 7721(b)(1). Defendants claim 15 USC §77 z-1(b)(d) and z-2 apply to "any private action arising under this subchapter," and "controls a 1933 state court action."

¹The consolidation occurred on September 7, 2017.

Plaintiffs state the PSLRA applies only to federal cases. The language of 77 z-1 refers to “any motions to dismiss” unless “discovery is necessary to preserve evidence or present undue prejudice to that party.” §77 z-2. Plaintiffs have also repeatedly raised the issue of fading memories due to delay in the case and problems with the availability of evidence from any delay. The case is almost two years old and involves transactions about four years old.

The construction of *Cyan* by defendants is rational but involves inferences and conclusions apparently not uniformly accepted by several courts, i.e. *In Re Regions Morgan Kiegen Sec.*, No. 07-02F30 W.D. Tenn Feb 16, 2010; *In Re Transcript Int’l Sec Litig*, 57 Supp 2d 836 (D Neb 1999), (looking for clear indication of intent and explicit statement of that power for state court stay); *In Re Pacific Biosciences*, etc. and other cases cited in plaintiff’s brief.

The long and the short of it is that a stay in cases of this magnitude makes practical sense. But likewise the complaint alleges action taken in 2014, plaintiffs’ suits filed in 2016 and 2017, and the ‘stay’ awaiting the decision in *Cyan* all weigh against plaintiff’s ability to process their case. The delay exposes plaintiffs to faded memories and prejudice. The court concludes under state law, and the circumstances of this case, do not warrant a further stay.

After considering all the arguments and the processing of the case thus far, the

court concludes a stay is not mandatory, necessary or warranted under MCR 2.302(C).
Defendant's motion is denied; and

IT IS SO ORDERED.

/s/ Brian R. Sullivan 8/1/2018
BRIAN R. SULLIVAN
Circuit Court Judge

ISSUED: